



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 28, 2021

Ms. Rachael Foster
Assistant District Attorney
Lubbock County
904 Broadway, Second Floor
Lubbock, Texas 79401

OR2021-30032

Dear Ms. Foster:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 912904 (PIR# 21-ORR-0016).

The Lubbock County Sheriff's Office (the "sheriff's office") received a request for any information pertaining to the requestor's client during a defined time period. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.130, 552.147, and 552.152 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.108(a)(1) of the Government Code excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]" Gov't Code § 552.108(a)(1). A governmental body claiming section 552.108(a)(1) must explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). Section 552.108 may be invoked by the proper custodian of information relating to a pending investigation or prosecution of criminal conduct. *See Open Records Decision No. 474 at 4-5 (1987)*. Where a governmental body has custody of information relating to the pending case of a law enforcement agency, the custodian of the records may withhold the information if it provides this office with a demonstration the information relates to the pending case and a representation from the law enforcement agency that it wishes to have the information

withheld. You state, and provide documentation demonstrating, the Hockley County District Attorney's Office (the "district attorney's office") objects to the release of the submitted information because its release would interfere with a pending prosecution. Based on this representation, we conclude the release of the information at issue would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Thus, section 552.108(a)(1) is applicable to the submitted information.

We note, however, section 552.108 does not except from disclosure "basic information about an arrested person, an arrest, or a crime." Gov't Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-88; Open Records Decision No. 127 (1976) (summarizing the types of information considered to be basic information). Thus, with the exception of the basic information, the sheriff's office may generally withhold the submitted information under section 552.108(a)(1) of the Government Code on behalf of the district attorney's office

However, the requestor is a representative of the Office of the Regional Public Defender for Capital Cases (the "public defender's office"). Section 411.1272 of the Government Code provides as follows:

The office of capital and forensic writs and a public defender's office are entitled to obtain from the [Texas Department of Public Safety ("DPS")] criminal history record information [(“CHRI”)] maintained by [DPS] that relates to a criminal case in which an attorney compensated . . . by the public defender's office has been appointed.

Gov't Code § 411.1272. In addition, section 411.087(a)(2) of the Government Code reads as follows:

(a) Unless otherwise authorized by Subsection (e), a person, agency, department, political subdivision, or other entity that is authorized by this subchapter or Subchapter E-1 to obtain from the [DPS CHRI] maintained by [DPS] that relates to another person is authorized to:

. . .

(2) obtain from any other criminal justice agency in this state [CHRI] maintained by that criminal justice agency that relates to that person.

Id. § 411.087(a)(2). CHRI is defined as "information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions." *See id.* 411.082(2). Accordingly, the requestor has a right of access to the submitted CHRI pursuant to sections 411.087(a)(2) and 411.1272 of the Government Code if it relates to a

criminal case in which an attorney compensated by the public defender's office is appointed. *See id.* §§ 411.087(a)(2), .1272. A statutory right of access prevails over the Act's general exceptions to public disclosure, including section 552.108 of the Government Code. *See* Open Records Decision Nos. 613 at 4 (1993) (exceptions in Act cannot impinge on statutory right of access to information), 451 (1986) (specific statutory right of access provisions overcome general exception to disclosure under the Act). Therefore, if the sheriff's office determines the submitted information relates to a criminal case in which an attorney compensated by the public defender's office is appointed, then the sheriff's office must release the CHRI pursuant to sections 411.087 and 411.1272 of the Government Code.¹

Section 552.152 of the Government Code provides:

Information in the custody of a governmental body that relates to an employee or officer of the governmental body is excepted from [required public disclosure] if, under the specific circumstances pertaining to the employee or officer, disclosure of the information would subject the employee or officer to a substantial threat of physical harm.

Gov't Code § 552.152. The sheriff's office represents the release of the undercover officers' identities within the basic information would subject the officers to a substantial threat of physical harm. Therefore, we find section 552.152 is applicable to the identities of the undercover officers within the information at issue. Accordingly, the sheriff's office must withhold the information you marked within the basic information under section 552.152 of the Government Code.

In summary, if the sheriff's office determines the submitted information relates to a criminal case in which an attorney compensated by the public defender's office is appointed, then the sheriff's office must release the CHRI pursuant to sections 411.087 and 411.1272 of the Government Code. With the exception of basic information, which must also be released, the sheriff's office may withhold the remaining information under section 552.108(a)(1) of the Government Code on behalf of the district attorney's office. In releasing basic information, the sheriff's office must withhold the information you marked under section 552.152 of the Government Code.

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable

¹ As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.

charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,

Pearlie Gault
Attorney
Open Records Division

PG/jm

Ref: ID# 912904

Enc. Submitted documents

c: Requestor
(w/o enclosures)